## Interview with Christopher Ehrman, Director of the CFTC Whistleblower Office

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As readers of the FCPA Blog know, the Dodd-Frank Act in 2010 created whistleblower bounty programs in both the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

On May 20, 2014, the CFTC **announced** that it had paid its first whistleblower award.

Christopher Ehrman, Director of the CFTC Whistleblower Office (WBO), recently spoke to me about the award and what we can expect from the CFTC WBO in the future.

JT: Congratulations on your first whistleblower award. What can you tell readers about it?

CE: The Commission issued its first award of approximately \$240,000 on May 19, 2014. The whistleblower on the matter provided specific, timely and credible information that led to the Commission bringing an enforcement action.

The Commission is committed to protecting the whistleblower's identity, so we cannot provide additional information about the whistleblower, or about the matter for which the whistleblower provided information.

JT: It's clear that protecting the confidentiality of whistleblowers is of paramount importance to your office. Given that the public is not privy to the information behind the award, perhaps you can explain some of the factors that you generally consider in making an award?

CE: When reviewing an award application the Commission considers several factors. These include:

- 1. The significance of the information provided by the whistleblower to the success of the action; (a) whether the reliability and completeness of the whistleblower's information conserved Commission resources; (b) The degree to which the information supported one or more successful claims;
- 2. The degree of assistance provided by the whistleblower: (a) Timeliness of the initial report; (b) Whether the whistleblower provided ongoing, extensive and timely cooperation; (c) Did the information allow the Commission to conserve resources it might have otherwise expended attempting to find violations of the Commodity Exchange Act (CEA);
- 3. The programmatic interests of the Commission: (a) The Commission will look at the type and severity of the commodity violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations. (b) As well as the dangers to market participants or others presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the underlying violation, the type of harm resulting from or threatened by the underlying violation, of harm or potential harm caused by the underlying violation, the type of harm resulting from or threatened by the underlying violation;
- 4. Whether the award enhances the Commission's ability to enforce the CEA, protect customers, and encourage submission of high quality information; and
- 5. Potential adverse incentives from oversized awards.

JT: Do you think this award will have any impact on the number of tips you receive?

CE: Since the inception of the program in 2012, we have seen a rapid increase in the number of whistleblower tips. (In 2012, there were 58; in 2013 there were 139; and in 2014, 167 as of June 9.)

Additionally, we have seen an increase in the quality of the tips submitted.

While it is too soon to tell how the first award will impact the program, we believe it sends a clear message to market participants that if they see violations of the CEA, they can report it, and possibly collect an award. Furthermore, they can be assured that the Commission will do everything possible to protect their identity.

JT: Can you tell us about the type of tips you generally receive?

CE: The tips we receive run the gamut of the CEA. They generally reflect the types of enforcement actions that the CFTC typically brings.

JT: In a recent **report to Congress**, you indicated that you've denied awards to certain claimants in the past. Can you explain why they were denied and how future whistleblowers can avoid their mistakes?

CE: Generally, applicants are denied awards because the information they provided did not lead to a successful enforcement action or the information they provided was already known to the Commission. The Whistleblower Program is meant to reward individuals who provide original information to the Commission that leads to a successful enforcement action of over \$1 million.

JT: If you could provide prospective whistleblowers (or their counsel) with one piece of advice, what would it be?

CE: It is important to put your best foot forward when providing information. The Division of Enforcement has limited resources concerning what information it can pursue. If a tip, complaint or referral (TCR) contains specific, timely and credible information, it is more likely that Enforcement staff will expend the resources to investigate the matter.

JT: Should readers be aware of any new programs or initiatives in your office?

CE: The Whistleblower Office is making a concerted effort to make ourselves known to the general public. We attend industry conventions and speak on panels. Our goal is to educate the public about the program and its related awards and protections. If there are any questions about the program please email us at **whistleblower@cftc.gov**.

JT: What can we expect from the CFTC WBO over the next 6-12 months?

CE: It is always difficult to predict how particular investigations will proceed. They are often highly complex and resource intensive. It is certainly safe to say that the number of tips continues to rise. The quality of those TCRs continues to improve, as well. We are hopeful that this is a formula for larger and more frequent whistleblower awards in the near future.

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